

1 THE HONORABLE BARBARA J. ROTHSTEIN
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 JONG HAM, an individual,

12 Plaintiff,

13 v.

14 JP MORGAN CHASE BANK, N.A., a
15 Delaware corporation,

16 Defendant.

CASE NO. 3:23-cv-05698-BJR

STIPULATED PROTECTIVE ORDER

17
18 1. **PURPOSES AND LIMITATIONS**

19 Discovery in this action is likely to involve production of confidential, proprietary, or
20 private information for which special protection may be warranted. Accordingly, the Parties
21 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
22 Parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
23 protection on all disclosures or responses to discovery, the protection it affords from public
24 disclosure and use extends only to the limited information or items that are entitled to confidential
25 treatment under the applicable legal principles, and it does not presumptively entitle Parties to file
26 confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 Confidential Material may be designated as CONFIDENTIAL or HIGHLY
 3 CONFIDENTIAL – ATTORNEY'S EYES ONLY, pursuant to this Stipulate Protective Order.
 4 Unless indicated otherwise, Confidential Material shall include both information designated as
 5 CONFIDENTIAL and material designated as HIGHLY CONFIDENTIAL – ATTORNEYS'
 6 EYES ONLY.

7 Materials designated as CONFIDENTIAL shall include the following documents and
 8 tangible things produced or otherwise exchanged, and all information contained or disclosed
 9 therein: confidential (a) research, development, marketing, and commercial information, (b)
 10 protected personal information; and (c) protected materials or any information that a party believes
 11 in good faith to be subject to federal, state, or foreign Data Protection Laws or other privacy
 12 obligations. Examples of such Data Protection Laws include, without limitation, The Gramm-
 13 Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (financial information); The Health Insurance
 14 Portability and Accountability Act and the regulations thereunder (HIPAA), 45 CFR Part 160 and
 15 Subparts A and E of Part 164 (medical information); Fair Credit Reporting Act (FCRA), 15 USC
 16 § 1681 et seq. (financial information); Electronic Communications Privacy Act of 1986, 18 U.S.C.
 17 § 2511 (private communication); Genetic Information Non-discrimination Act of 2008 (GINA)
 18 (biometric information).

19 Materials designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY shall
 20 mean the following materials that are not public or do not reflect publicly available information,
 21 the disclosure of which would create a substantial risk of serious harm that could not be avoided
 22 by less restrictive means and that have not already been shared with the receiving Party: (a) trade
 23 secrets; (b) business and other strategic plans; (c) financial documents including sales and profit
 24 information; (d) pricing information; (e) information related to security, fraud detection, and law
 25 enforcement, and (i) related policies and procedures and (ii) related documents regarding third
 26 parties; and (f) sensitive and/or private information related to third parties.

1 3. SCOPE

2 The protections conferred by this agreement cover not only Confidential Material (as
 3 defined above), but also (1) any information copied or extracted from Confidential Material; (2)
 4 all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony,
 5 conversations, or presentations by Parties or their counsel that might reveal Confidential Material.

6 The Stipulated Protective Order shall govern all documents, testimony, and information
 7 contained therein, including all copies, excerpts, summaries, or compilations thereof, whether
 8 revealed in a document, deposition, other testimony, discovery response, or otherwise, that the
 9 producing Party produces to the receiving Party and that the producing Party designates as
 10 confidential under this Stipulated Protective Order. However, the protections conferred by this
 11 agreement do not cover information that is in the public domain or becomes part of the public
 12 domain through trial or otherwise.

13 Nothing herein shall be construed as an admission or concession by any Party that
 14 designated Confidential Material, including any document, testimony, or information derived from
 15 Confidential Material, constitutes material, relevant, or admissible evidence in this matter. The
 16 entry of this Stipulated Protective Order does not preclude any Party from seeking further order of
 17 this Court, including modification of this Stipulated Protective Order, challenging of any
 18 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY designation as
 19 improper, or from objecting to discovery that the Party believes to be improper.

20 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

21 4.1 Basic Principles. A receiving Party may use Confidential Material that is disclosed
 22 or produced by another Party or by a non-Party in connection with this case only for prosecuting,
 23 defending, or attempting to settle this litigation. Confidential Material shall not be used for any
 24 business, competitive, or other non-litigation purpose, without the express written consent of
 25 counsel for the designating Party or by order of the Court. Confidential Material may be disclosed
 26 only to the categories of persons and under the conditions described in this agreement. Confidential

1 Material must be stored and maintained by a receiving Party at a location and in a secure manner
 2 that ensures that access is limited to the persons authorized under this agreement.

3 For avoidance of doubt, nothing in this Stipulated Protective Order will bar outside counsel
 4 from rendering advice to their clients with respect to this litigation and, in the course thereof,
 5 relying upon any information designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL –
 6 ATTORNEYS' EYES ONLY, provided that the contents of the information are not disclosed
 7 except as permitted by this Stipulated Protective Order. Further, the restrictions or obligations of
 8 this Stipulated Protective Order will not be deemed to prohibit discussion of any Confidential
 9 Material with any person who already has or obtains legitimate possession of that information.

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 11 by the Court or permitted in writing by the designating Party, a receiving Party may disclose any
 12 Confidential Material only to:

13 (a) the receiving Party's counsel in this action, including outside counsel and
 14 in-house counsel, as well as employees of counsel to whom it is reasonably necessary to disclose
 15 the information for this litigation;

16 (b) an individual receiving Party and/or the officers, directors, and employees
 17 of a corporate receiving Party, to whom disclosure is reasonably necessary for this litigation, unless
 18 a particular document or material produced is for Attorney's Eyes Only and is so designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
 20 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) persons or firms retained for the purpose of litigation support (e.g.
 23 professional vendors for copy or imaging services retained by counsel to assist in the duplication
 24 of Confidential Material; audio and video recording; interpreting or translating; preparing exhibits
 25 or demonstratives; organizing, storing or retrieving data in any form or medium; jury consulting;
 26 mock trial coordination; litigation presentation ("hot seat") technicians, etc.), provided that counsel

1 for the receiving Party retaining such persons or firms instructs them not to disclose any
 2 Confidential Material to third Parties and to immediately return all originals and copies of any
 3 Confidential Material at the conclusion of their services or this litigation;

4 (f) during their depositions, witnesses in the action to whom disclosure is
 5 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
 6 (Exhibit A), unless otherwise agreed by the designating Party or ordered by the court. Pages of
 7 transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must
 8 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
 9 under this agreement;

10 (g) the author or recipient of a document containing the information or a
 11 custodian or other person who otherwise possessed or knew the information already.

12 4.3 **Disclosure of Information or Items designated as HIGHLY CONFIDENTIAL –**
 13 **ATTORNEYS' EYES ONLY.** Access to, and disclosure of, any material designated HIGHLY
 14 CONFIDENTIAL – ATTORNEYS' EYES ONLY shall be limited to individuals listed in Sections
 15 4.2(a) and (c)-(g).

16 4.4 **Filing Confidential Material.** Before filing Confidential Material or discussing or
 17 referencing the confidential content of such material in court filings, the filing Party shall confer
 18 with the designating Party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether
 19 the designating Party will remove the confidential designation, whether the document can be
 20 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the
 21 meet and confer process, the designating Party must identify the basis for sealing the specific
 22 confidential information at issue, and the filing Party shall include this basis in its motion to seal,
 23 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
 24 procedures that must be followed and the standards that will be applied when a Party seeks
 25 permission from the court to file material under seal. A Party who seeks to maintain the
 26 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
 STIPULATED PROTECTIVE ORDER - 5
 (Case No. 3:23-cv-05698-BJR)

1 even if it is not the Party filing the motion to seal. Failure to satisfy this requirement will result in
 2 the motion to seal being denied, in accordance with the strong presumption of public access to the
 3 Court's files. Nothing in this subsection will prohibit parties from referencing the general character
 4 or category of Confidential Material or the reasons for the confidentiality designations in Court
 5 filings, where doing so does not reveal specific matters reasonably deemed confidential.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party
 8 or non-Party that designates information or items for protection under this agreement must take
 9 care to limit any such designation to specific material that qualifies under the appropriate
 10 standards. The designating Party must designate for protection only those parts of material,
 11 documents, items, or oral or written communications that qualify, so that other portions of the
 12 material, documents, items, or communications for which protection is not warranted are not swept
 13 unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 15 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
 16 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 17 and burdens on other Parties) expose the designating Party to sanctions.

18 If it comes to a designating Party's attention that information or items that it designated for
 19 protection do not qualify for protection, the designating Party must promptly notify all other Parties
 20 that it is withdrawing the mistaken designation.

21 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
 22 agreement (see, *e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or
 23 discovery material that qualifies for protection under this agreement must be clearly so designated
 24 before or when the material is disclosed or produced.

25 (a) **Information in documentary form.** (*e.g.*, Paper or electronic documents and
 26 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),

1 the designating Party must affix the words CONFIDENTIAL or HIGHLY CONFIDENTIAL –
 2 ATTORNEYS' EYES ONLY to each page that contains Confidential Material. If only a portion
 3 or portions of the material on a page qualifies for protection, the producing Party also must clearly
 4 identify the protected portion(s) (e.g., by making appropriate markings in the margins). With
 5 respect to all designated materials produced with an associated load file, the producing Party will
 6 include the appropriate designation in the load file. With respect to all designated digital files
 7 produced in native format, the producing Party will include the appropriate designation in the
 8 filename or cover sheet.

9 (b) Testimony given in deposition or in other pretrial proceedings. The Parties
 10 and any participating non-Parties must identify on the record, during the deposition or other pretrial
 11 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
 12 after reviewing the transcript. Any Party or non-Party may, within thirty days after receiving the
 13 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
 14 exhibits thereto, as confidential. If a Party or non-Party desires to protect confidential information
 15 at trial, the issue should be addressed during the pre-trial conference.

16 (c) Other tangible items. The producing Party must affix in a prominent place
 17 on the exterior of the container or containers in which the information or item is stored the words
 18 CONFIDENTIAL or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY. If only a portion
 19 or portions of the information or item warrant protection, the producing Party, to the extent
 20 practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. Inadvertent or unintentional disclosure, without
 22 the required confidentiality designation, of any document, testimony, or information that the
 23 disclosing Party intended to designate as Confidential Material shall not, standing alone, be
 24 deemed a waiver in whole or in part of the producing Party's claim of confidentiality, either as to
 25 specific documents and information disclosed or as to the same or related subject matter. In the
 26 event that a designating Party makes such an inadvertent production, that Party shall contact the

1 receiving Party within 30 days of the discovery of the inadvertent production, or as promptly as
 2 reasonably possible thereafter, and inform the receiving Party or Parties in writing of the
 3 inadvertent production and the specific material at issue.

4 If timely corrected, an inadvertent failure to designate qualified information or items does
 5 not, standing alone, waive the designating Party's right to secure protection under this agreement
 6 for such material or for materials of the same or related subject matter. Upon timely correction of
 7 a designation, which shall be made by the designating Party in writing promptly after the discovery
 8 of the inadvertent production, the receiving Party must make reasonable efforts to ensure that the
 9 material is treated in accordance with the provisions of this agreement. The receiving Party must
 10 treat the materials as Confidential Material, once the designating Party so timely notifies the
 11 receiving Party. If the receiving Party has disclosed the materials before receiving the timely
 12 corrected designation, the receiving Party shall notify the designating Party in writing of the
 13 identity of any persons to whom such materials are disclosed who would not be entitled to receive
 14 such materials under this Stipulated Protective Order. The designating Party shall advise such
 15 persons of the terms of this Stipulated Protective Order and request that such persons sign the
 16 "Acknowledgment and Agreement to Be Bound" (Exhibit A).

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or non-Party may challenge a designation of
 19 confidentiality at any time. The designating Party bears the burden of establishing confidentiality
 20 if a designation is challenged. Unless a prompt challenge to a designating Party's confidentiality
 21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 22 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 24 original designation is disclosed.

25 6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
 26 regarding confidential designations without court involvement. Any motion regarding confidential

1 designations or for a protective order must include a certification, in the motion or in a declaration
 2 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 3 affected Parties in an effort to resolve the dispute without court action. The certification must list
 4 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 5 to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 7 intervention, the designating Party may file and serve a motion to retain confidentiality under Local
 8 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 9 persuasion in any such motion shall be on the designating Party. Frivolous challenges, and those
 10 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
 11 other Parties) may expose the challenging Party to sanctions. All Parties shall continue to maintain
 12 the material in question as confidential until the court rules on the challenge.

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 14 LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation that compels
 16 disclosure of any information or items designated in this action as CONFIDENTIAL or HIGHLY
 17 CONFIDENTIAL - ATTORNEYS' EYES ONLY, that Party must:

18 (a) promptly notify the designating Party in writing and include a copy of the
 19 subpoena or court order. The recipient of the request, subpoena, or order shall not disclose any
 20 Confidential Material pursuant to the request, subpoena, or order prior to the date specified for
 21 production on the request, subpoena, or order;

22 (b) promptly notify in writing the Party who caused the subpoena or order to
 23 issue in the other litigation that some or all of the material covered by the subpoena or order is
 24 subject to this agreement. Such notification shall include a copy of this agreement; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 26 the designating Party whose Confidential Material may be affected.

7 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential Material to any person or in any circumstance not authorized under this agreement, the receiving Party must immediately (a) notify in writing the designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

15 | P a g e | 9. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 Party must return all Confidential Material to the producing Party, including all copies, extracts
18 and summaries thereof. Alternatively, the Parties may agree upon appropriate methods of
19 destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
21 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
23 product, even if such materials contain Confidential Material.

24 After the termination of this action by entry of a final judgment or order of dismissal
25 (including without limitation any appeals and after the time for filing all appellate proceedings has
26 passed) the provisions of this Stipulated Protective Order shall continue to be binding. This

1 Stipulated Protective Order is, and shall be deemed to be, an enforceable agreement between the
 2 Parties, their agents, and their attorneys. The Parties agree that the terms of this Stipulated
 3 Protective Order shall be interpreted and enforced by this Court. The confidentiality obligations
 4 imposed by this agreement shall remain in effect until a designating Party agrees otherwise in
 5 writing or a court orders otherwise.

6 **10. THIRD PARTY PRODUCTION**

7 10.1 To the extent discovery or testimony is taken of third Parties, the third Parties may,
 8 within 30 days of producing the discovery or testimony, designate as CONFIDENTIAL or
 9 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY any documents, information or other
 10 material, in whole or in part, produced or given by such third Parties pursuant to this Stipulated
 11 Protective Order. Any third Party intending to designate discovery or testimony as
 12 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY pursuant to this
 13 Order must sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A). All provisions
 14 of this Stipulated Protective Order, including the designation and challenge procedures, shall apply
 15 to the third Party and its designations. To the extent discovery or testimony is taken of a third Party
 16 and the third Party does not immediately designate a non-public document, information or other
 17 material, in whole or in part, as CONFIDENTIAL or HIGHLY CONFIDENTIAL –
 18 ATTORNEYS’ EYES ONLY pursuant to this Stipulated Protective Order, such non-public
 19 material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY pursuant
 20 to this Stipulated Protective Order for thirty (30) days, at which point this designation shall end.
 21 If, however, during the thirty (30) day period, the third Party designates the material as
 22 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY pursuant to this
 23 Stipulated Protective Order, the material will be treated as the third Party designated it. If, during
 24 that thirty (30) day period, a Party has reason to believe that material from the third Party ought to
 25 be treated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,
 26 then that Party may notify the third Party of such belief.

1 10.2 A Party that receives documents from a third Party pursuant to a subpoena issued
2 under this case number, or that the Party may seek to use as evidence in this case, will reproduce
3 those documents to the other Parties within ten (10) business days of receipt.

4 11. MODIFICATIONS OF THIS ORDER

5 This Order may be modified by the Court, or by agreement of the Parties subject to
6 approval of the Court.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: July 17, 2024

s/ Binah B. Yeung

3 Binah B. Yeung, WSBA No. 44065

4 Amy H. Yoon, WSBA No. 58102

CAIRNCROSS & HEMPELMANN, P.S.

5 524 2nd Avenue, Suite 500

6 Seattle, WA 98104-2323

7 Phone: (206) 254-0700

byeung@cairncross.com

ayoon@cairncross.com

8 *Attorneys for Plaintiff*

9 DATED: July 17, 2024

s/ Andrew DeCarlow

10 Andrew DeCarlow, WSBA No. 54471

MORGAN, LEWIS & BOCKIUS LLP

11 1301 Second Avenue, Suite 3000

12 Seattle, WA 98101

13 Phone: (206) 274-6400

Email: andrew.decarlow@morganlewis.com

14 Arjun Rao (*pro hac vice*)

15 Marcos Sasso (*pro hac vice*)

16 2049 Century Park East, Suite 700

17 Los Angeles, CA 90067

18 Phone: (310) 907-1064

Email: arjun.rao@morganlewis.com

marco.sasso@morganlewis.com

19 *Counsel for Defendant*

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.

Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED: July 19, 2024

Barbara Rothstein

Barbara Jacobs Rothstein
U.S. District Court Judge

26 STIPULATED PROTECTIVE ORDER - 14
(Case No. 3:23-cv-05698-BJR)

MORGAN, LEWIS & BOCKIUS LLP
ATTORNEYS AT LAW
1301 SECOND AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101
TEL 1.206.274.6400 FAX 1.206.274.6401

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on _____ in
the case of *Jong Ham v. JPMorgan Chase Bank N.A.*, 3:23-cv-05698-BJR. I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 || Date:

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature: